IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5041 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARVINDKUMAR DAHYABHAI PATEL

Versus

COMMISSIONER OF HEALTH AND WELFARE DEPARTMENT

Appearance:

1. Special Civil Application No. 5041 of 1999

MR VK JOSHI for Petitioner No. 1

MR KL PANDYA ASSTT GOVERNMENT PLEADER for Respondent No. 1

MR MRUGEN K PUROHIT for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 28/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr.V.K.Joshi on behalf of

the petitioner and learned AGP Mr.K.L.Pandya for respondent - State Authority.

#. In the present petition, the petitioner having grievance that in the year December, 1997, his wife was suffering from critical heart trouble and thereby leading her to Doctors of Bharuch as well as Bombay after examining, suggested that the Open Heart Surgery is required to be carried out immediately and on instruction of the Doctor, the petitioner's wife was got operated at Jaslok Hospital, Bombay. It is case of the petitioner that prior to this operation, the petitioner also moved with an application before the Government to carry out the operation out side the State but it was not sanctioned prior to the date of operation. Thereafter, the petitioner presented the medical bill to the tune of Rs.2,10,366/- for reimbursement for the same in view of the Government Rules and Regulations, however, till date, the same has not been sanctioned by the Government and the petitioner is suffering great financial crisis and therefore this petition.

#. On behalf of the respondent No.1, affidavit-in-reply has been filed by Mr.M.K.Patel, Account Officer working under the respondent No.1. The contentions raised in the reply that according to the Rules, if the Government servant or their family members are required to take medical treatment in Government Hospital situate at a station or in the Government Hospital of the of the district which is just and proper as per the opinion of the authorised medical practitioners. If no such hospital is available then he can take treatment in the hospital available in the State which is just and proper as per the opinion of the authorised medical practitioner. However, in any exceptional case where authorised medical practitioner is in view that just and proper treatment is available in the recognised hospital situated out of the State or within the State, then after obtaining permission [which should be obtained prior to the medical treatment, except in case where delay may cause dangerous to the health of patient] of Commissioner of Health, he can take treatment in recognised hospital situated at out of State or within the State for prescribed disease like heart disease, kidney transplant, blood cancer etc.

In the said reply, the authorised medical practitioner has been specified that according to the Rules, 1988, under Rule 2[3] of the Gujarat State Service [Medical Treatment] Rules, 1988, the Civil Surgeon of the District Hospital, Superintendent of Government

Class-I, Hospital or Medical Officer not below the Class-II Hospital or Medical officer not below than Class-II at a headquarter is an authorised Medical Practitioner. The deponent further averred in the reply that in respect of the facts of this case, that Smt.S.A. Patel has taken treatment from Dr.B.R.Patel from 3.12.97 which is a private doctor. Then after she has taken treatment at Narhari Arogya Kendra, Vadodra from 8.1.98 to 13.1.1998 and from 2.2.98 to 12.2.98 at Mahavir General Hospital, Surat. Both these hospitals are private hospitals and not recognised for medical treatment as provided under the Rules. As per the provisions made in the Rules, Smt.Patel was required to take above treatment at Jamnabai / SSG Hospital, Vadodara and Civil Hospital, Surat and therefore, expenditure of medical treatment taken at above hospitals which comes Rs.1075.55, Rs.4843.37 and Rs.15,043.00 ps respectively are not admissible to the petitioner. Moreover, Rs.560.00 paid to Advance Laboratory, Vadodara for lab test of Heena Patel, daughter of petitioner is also not admissible as this test was done as per advice of Dr.Gopal Shah, a private doctor of Vadodara. It was further clarified that the Cardiology Hospital, Ahmedabad and therefore, patient is required to take treatment at this hospital. If the Head of Cardiology Department is satisfied and recommends that the suitable treatment is not available at Cardiology Hospital, he recommends that the petitioner is required to take treatment in recognised hospital out side State or within the State. In this case Head of Cardiology Department is authorised Medical Practitioner. The respondent also further averred in reply that it is clear that Smt.Patel was suffering from heart disease from 3.12.1997, she has taken treatment for replacement of heart valve from 19.2.1998 to 4.3.1998 at Jaslok Hospital, Bombay without obtaining prior permission of Health Commissioner. The petitioner had applied vide his application dated 2.5.1998 through Principal, Shri R.M. Commerce College, Rajpipla, respondent No.2 which was forwarded by him to the Commissionerate vide letter dated 11.5.1998 for giving permission to reimburse of medical bill amounting Rs.1,87,924.00 expended at Jaslok Hospital, Bombay for the treatment of replacement of heart valve and Rs.920.00 for Blood Test INR done at Nanavati Hospital, Bombay. From the above fact, it seems that petitioner was in a position to apply well in advance for prior permission for taking treatment out of State i.e. Jaslok Hospital, Bombay petitioner has not obtained such permission. Moreover as per the provision made in Rule 2[7][T] of the Gujarat State Services [Medical Treatment] Rules, 1988, reimbursement of expenses for the treatment for

replacement of heart valve is admissible to Government employee. This being a clear admission in the reply made by the respondent. Under the circumstances the claim of reimbursement of medical bill amounting Rs.2,10,366.52 was rejected by the Commissionerate vide letter dated 22nd May, 1998 and 24th February, 1998 seeking permission for taking treatment at Jaslok Hospital, Bombay with his medical claim which was also not received by the Commissionerate because of improper addressing of the letter dated 27.2.1998 of respondent no.2, as the same was wrongly addressed. However, the contention was raised that said application was also not made in time.

In para-9 of the reply, certain amount has been specified about heart disease being prescribed rate in respect of the Cardiology, Angiography, Angioplasty, Coronery Artery and Bypass Grafting [CABG]. In view of above averments made in the reply, it is made clear in para-10 by the respondents that though department has full sympathy with the petitioner but Rules do not permit the respondent Commissionerate to sanction medical claims of the petitioner.

#. Learned advocate Mr.V.K.Joshi appearing on behalf of the petitioner has submitted that medical bill which has been produced by the petitioner which relates to only medicines and replacement of two heart valves except that the Jaslok hospital has not charged any amount including the operation charges and other cost from the petitioner. Learned advocate Mr.Joshi also submitted that in reply, the respondent having only one objection that no prior permission has been obtained from the authority and no recommendation by the authorised medical practitioner to take treatment out of State hospital and that is how the claim has been rejected. He also submitted that they relied upon the opinion and recommendation of the Doctor under whose treatment was taken by the petitioner. Therefore, according to their recommendations, they obtained medical treatment at Jaslok Hospital. He also submitted that there is no doubt raised by the respondent about genuineness of the medical bills produced by the petitioner and they have also not disputed the genuineness of operation which has been carried out by the wife of the petitioner. Both facts have been admitted by the respondent in their reply. He also submitted that according to the Medical Rules [4], in case of any emergency, if any treatment is required to be availed by the Government employee in private hospital or non recognised hospital or dispensary even that amount is available on the basis of the Government Rates which are available in the Government Hospital. Therefore,

according his submissions, merely technical stand which has been taken in serious disease having by the wife of the petitioner and therefore, he submitted that similar view has been taken by this Court in more than one cases.

#. Learned AGP Mr.K.L.Pandya for the respondent has submitted that the respondent has filed detailed affidavit in reply and raised the contention and according to their contentions, prior permission and recommendation by the authorised medical practitioner as defined under the Rules being condition precedent and in absence of that, no medical reimbursement is allowed by the Government and therefore, the claim of the petitioner has been rightly rejected by the Commissionerate and therefore, according to his submissions, present petition is required to be dismissed because the claim of the petitioner is contrary to the Medical Rules, 1988.

#. I have considered submissions made by the learned advocates for the parties. This Court has also considered the decisions of this Court, so also, the Apex Court. The views taken by this Court and Apex Court in following three decisions are referred to above.

This Court in case of R.G.PATEL VS. STATE OF GUJARAT reported in 2000[2] GCD 1169, has made the following observations.

"7. It is a case of a Government Officer, who has unfortunately because of the serious ailment has undergone surgery. It is not a case where the petitioner had gone on pleasure tour to Madras or for some other purpose. In such matters, the approach of the officers should have been practical and justice oriented. Where are satisfied that that the petitioner has undergone the surgery and the bill which has been submitted is not inflated one even he has gone without taking prior permission, the matter would have been considered for grant of ex post facto permission and rule may be of grant of permission exception may be refusal thereof. In the matter of the operations or other treatments which concerns to the human life it is who to take care and concern and to decide in which hospital and by which surgeon, who is expert in this surgery he has to undergo this surgery. The full confidence and faith in the surgeon and hospital is utmost important and relevant. These are not simple matters of property dispute or service

dispute or some other dispute but it relates to human life and he will not like to take any risk. It is unfortunate that despite of the fact that Government spends huge amount in maintaining Government hospitals, the peoples are not having that much of belief and confidence in these hospitals. Seldom the peoples of the category to which the petitioner belongs go for such surgery to the Government hospitals. It is unfortunate that despite of heavy financial burden on the public exchequer of maintaining and running professionally these hospitals could not get the name, fame and reputation. Even the people feel unsafe to go to these hospitals for ordinary treatment what to say for undergoing such major surgery. These hospitals are meant only for the persons who are poor and could not afford the expenses of the hospitals which have earned name, fame and reputation and where expert surgeons of reputes are working. Insistence of the Government is that only in case where such surgery is not available in the State the employee can be permitted to go elsewhere seems to be not reasonable. Many of the surgeons are there undertaking such surgery but in civil hospitals the package of this surgery would not have been less than what the petitioner had to spend at Apollo Hospital. Even if it is taken that some more amount has been spent by the petitioner then what for this surgery would have been available in Gujarat he will like to have the surgery from the surgeon of the repute. The expenses which incurred by the petitioner at Apollo Hospital for this surgery cannot be said to be an inflated or unreasonable amount which has been paid by the petitioner to the Hospital. On the face of it is just and reasonable amount and for the same should have been paid to the petitioner. It is not the case of the respondent that ex post facto sanction / permission for this surgery cannot be granted. It is also not the case of the respondent that in appropriate cases, the Government has no power to grant ex-gratia difference of the actual amount spend and for which the petitioner is entitled as per the Government resolution."

Similarly, in case of MADHAVDAS GHAGWANDAS KHUSHIRAMANI VS. STATE OF GUJARAT reported in 2000 [1] G.L.H. 509, this Court has made the following

observations which is produced as under :

"1. What the Welfare State and its officers contend is that the petitioner has to undergo by-pass surgery of severe triple vessel coronary artery at Civil Hospital, Ahmedabad and not a the Hospital of his confidence and belief. It is unfortunate that the respondents have insisted to undergo for this serious operation at the Civil Hospital, Ahmedabad. But they are not appreciating that despite of the fact that the State Government invests huge amount of public money for this Civil Hospital, it could not gain that much reputation, faith, belief and confidence of the ailing citizens of the city to prefer this Hospital for this type of serious operation, i.e. to undergo by-pass surgery of triple vessel coronary artery. It is not a matter of going to a restaurant to have lunch or dinner or a breakfast or to go to law garden to have a char or dabeli or hot dog, etc. It is a very serious thing and as it pertains to the life of a human being the person concerned will not like to take any risk and at all the cost he will like to have this operation to be undertaken by a senior, experienced and reputed Doctor and at the hospital of high reputation and confidence. Though the material is not produced on the record of this Special Civil Application and it is not possible to give any final finding, it comes from the different corners that the higher ups of the society, offices and officers of the Government do not prefer to go for all these major operations at the Civil Hospital. Even for angiography, the higher class of officers and the high dignitaries of the State Government, as what it comes from the different corners, do not prefer to go to Civil Hospital. They prefer either to go to Escort, Delhi or Apollo, Madras or Bombay Hospital, Bombay or even at Ahmedabad to the Gujarat Research and medical Institute [Rajasthan Hospital]. If for angiography this class of persons do not prefer Civil Hospital how it is desirable and reasonable of the officers of the Gandhinagar to expect that the petitioner had to go for this serious operation at the Civil Hospital, Ahmedabad.

2. The State Government permits its employees / officers to go for this operation at the institution other than the Civil Hospital,

Ahmedabad though on prior sanction of the concerned department. Though material is not there on the record of this special civil application, but it comes from different corners that for higher ups in the services and the offices where they have undergone operations outside the State of Gujarat, the post facto sanctions are being given or immediately the sanctions are being made or even advance finances are arranged or bills of hospitals are paid directly. I am constrained to observe that for the employees lower in ladder all rules and regulations are to be strictly complied with and made a rule. In the matter of engaging the services of a professional, whether it is a case of engaging an advocate in the High Court or the District Courts or subordinate courts or Doctors for Medical treatment or for undergoing operations, the person shall prefer to engage the best professional more so, when it is a case of life of a person concerned, as stated earlier, he will not like to take any risk or chance. It is true that the people are going to Civil Hospital for these operations but the people of the category who have no means and money are going there. They are the poor persons who have no means to arrange the money to pay fees of the professionals at other institutions. The State Government provides free medical facilities to its employees and officers and in case where they go outside the State for operation on prior approval of the concerned department of the State Government their bills of operations are reimburse. In a case where employee is serious and desires to go to the hospital outside the State for operation and which he had also made it clear by making an application, if we go by the defence of the respondents, then he has to wait till the sanction has been granted before he proceeds to Chennai [Madras] and the possible result would have been in majority of the cases death of that person. In such matters, it is not unknown that the officers of the State Government do not expeditiously deal with such applications."

Even the Apex Court in case of SURJI SINGH V. STATE OF PUNJAB reported in AIR 1996 SC 1388 has made the following observations which is reproduced as under :

"11. The appellant therefore had the right to take steps in self preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, bare-facedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternate hospital as per policy. When the State itself has brought the Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to the Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in India, he could have gone to the Escorts like many others did, to save his life. But instead he has gone others did, to save his life. But instead he has done that in London incurring considerable expense. The Doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant, the rates admissible as per the Escorts. The claim of the appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course the sum of Rs.40,000/- already paid to the appellant would have to be adjusted in computation. Since the appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs."

#. In view of above observations made by this Court in aforesaid two decisions referred to above and the observations made by the Apex Court and considering the facts narrated in the petition, now the only dispute or objection which has been raised by the respondent in reply that before taking treatment at Jaslok Hospital at Bombay, no letter / recommendation has been obtained by the petitioners from the authorised medical practitioner and as such, no prior permission has been obtained for taking treatment out side the State. It is necessary to note that the State Government has recognised Jaslok Hospital in case when the treatment is necessary to any government employee if requires out side the State. It

is not in dispute that Jaslok Hospital is not recognised by the State of Gujarat. Therefore, treatment has been taken by the wife of the petitioner at Jaslok Hospital which is recognised hospital by the State of Gujarat, now only objection that no prior permission and not letter of recommendation from the medical practitioner at Gujarat obtained by the petitioner and that is how the medical reimbursement claim has been rejected. It is also necessary to note one fact that before operation, one application was already submitted to the Principal of the College where the petitioner was working but there was some time consumed to pass appropriate orders by the respondent and prior to that, operation was required in emergency. Therefore, the wife of the petitioner was operated in Jaslok Hospital at Bombay. It may also be appreciated that there is no doubt created and mentioned by the respondent in their reply about genuineness of the medical bills produced by the petitioner. Therefore, if there is not doubt about the fact of operation that was carried out by the petitioner's wife at Jaslok Hospital and this being the undisputed fact between the parties, according to my opinion, the decision which has been taken by the respondent in rejecting the medical reimbursement bills produced by the petitioner is required to be quashed and set aside.

#. In the result, present petition is allowed. Consequently, the decision of the respondent in rejecting the claim of the petitioner for medical reimbursement of the medical bills in question is hereby quashed and set aside with direction to the respondent to make payment to the petitioner in respect of the medical reimbursement bill to the tune of Rs.2,10,366/- within one month from the date of receiving the copy of this order. It is also made clear that this Court has not passed any order in respect of the interest part on such delay caused on the part of the respondents.

Rule is made absolute accordingly.

No order as to costs.

Direct Service permitted.

Date : 28.8.2003 [H.K.Rathod, J.]

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